UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION FIVE

KNIGHT PROTECTIVE SERVICE, INC
Employer

and **Cases 5-RM-1000**
5-RM-1004

NATIONAL ASSOCIATION OF SPECIAL POLICE AND SECURITY OFFICERS (NASPSO)
Union

and

INTERNATIONAL UNION, SECURITY POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)
Union

DECISION AND DIRECTION OF ELECTION

The Employer, Knight Protective Service, Inc., has a contract with the General Services Administration (GSA) to provide security guard services at five buildings, including the Cohen Building and the Switzer Building. The Employer filed five petitions (Cases 5-RM-1001 through 5-RM-1004) covering its security guard employees at each of five buildings under this particular contract with GSA (the Voice of America contract or VOA). At the hearing on the five petitions, the parties entered into a stipulation that three buildings, Union Center Plaza, DEA Science Lab, and USDA are each an appropriate single facility bargaining unit. The parties further stipulated that the appropriate bargaining unit includes all security officers employed by the Employer and excludes all office clerical employees, professional employees, managerial employees, and supervisors as defined by the Act. Stipulated election agreements therefore were executed in those cases (Cases 5-RM-1001, 5-RM-1002, and 5-RM-1003). The parties disagree on issues concerning the Cohen Building (Case 5-RM-1004) and the Switzer Building (Case 5-RM-1000).

ISSUES

The issues raised by this proceeding are: (1) whether there is a question of representation to warrant processing the instant petitions; (2) whether the presumption that a single facility unit is an appropriate unit has been rebutted; and (3) whether lieutenants and sergeants are supervisors within the meaning of the Act and should be excluded from the bargaining unit(s).

EMPLOYER'S POSITION

The Employer contends: (1) the petition should be processed because the Employer has a "good-faith uncertainty" as to the majority status of each of the two unions claiming the right to represent the Employer's employees at the two buildings in issue; (2) the two buildings each constitute a separate appropriate bargaining unit; and (3) lieutenants and sergeants are supervisors within the meaning of the Act and should be excluded from the bargaining units.

SPFPA'S POSITION

Security, Police and Fire Professionals of America (SPFPA) takes the same position as the Employer, namely, that an election should be directed in single facility bargaining units at the Cohen and Switzer Buildings, and that lieutenants and sergeants are supervisors within the meaning of the Act.

NASPSO'S POSITION

National Association of Special Police and Security Officers (NASPSO) contends: (1) that the petition should not be processed because NASPSO is the certified collective-bargaining representative, and that the merger between NASPSO and SPFPA was not finalized; (2) that the only appropriate unit for an election is a combined unit of employees working at both the Cohen and Switzer Buildings; and (3) that lieutenants and sergeants are not supervisors within the meaning of the Act and should be included in the unit.

CONCLUSIONS

For the reasons that follow in this decision, and after careful consideration of the totality of the record evidence and the parties respective factual and legal positions as set forth in the record and the post-hearing briefs of the Employer and SPFPA,[1] I find: (1) that the competing claims of SPFPA and NASPSO raise a question concerning representation; (2) that the appropriate bargaining units consist of separate single-facility units of employees at the Cohen and Switzer Buildings; and (3) that lieutenants and sergeants are supervisors within the meaning of the Act.

The Employer presented one witness at the hearing: Benefits, Recruiting, and Union Manager Donna Snowden. NASPSO presented two witnesses: NASPSO Executive Director Caleb A. Gray-Burriss, and Security Officer Shavonya Gray.

HISTORY OF COLLECTIVE BARGAINING

In 1995, NASPSO was certified as the collective-bargaining representative of a combined unit of security officers employed by Hall Security Services at the Switzer Building and the Cohen Building. Thereafter, NASPSO entered into a collective-bargaining agreement with Hall Security for security officers working in those two buildings. In 1998, a successor employer, Intersec, received the contract from GSA for the Cohen and Switzer Buildings. In 1999, another

[1] NASPSO did not file a post-hearing brief.

successor employer, USEC, was awarded the contract for the two buildings. At some point later in 1999, Areawide Electronic Security Systems, Inc. (Areawide or AES) received the contract for the Cohen Building, while USEC remained the contractor at the Switzer Building. Approximately six months later, USEC lost the contract at the Switzer Building and Areawide gained that contract. NASPSO negotiated a collective-bargaining agreement with Areawide that covered, in a single bargaining unit, both the Cohen and Switzer Buildings. When the collective-bargaining agreement was renegotiated in 2002, all other buildings for which Areawide had a contract with GSA to supply security services (approximately 10 buildings) were added to the single, combined bargaining unit.

COMPETING CLAIMS

In early 2002, NASPSO sought to merge with SPFPA. During the process of that merger, in April 2002, NASPSO's then-President, Caleb A. Gray-Burriss, became employed by SPFPA as an International Representative. In a charge filed on September 5, 2002 in Case 5-CA-30697, the SPFPA alleged that Areawide violated Section 8(a)(5) of the Act by failing and refusing to bargain in good faith with SPFPA, the successor labor organization to NASPSO regarding a collective-bargaining agreement for employees at the Environmental Protection Agency. In a letter dated September 5, 2002, from attorney for SPFPA Bruce E. Goodman to Areawide, Goodman stated that the collective-bargaining agreement between Areawide and SPFPA covers all Areawide locations. In letters to the Region from Goodman dated November 22 and 27, 2002, Goodman identified SPFPA as the successor to NASPSO in the collective-bargaining agreement covering Areawide. In a letter dated October 8, 2002, on SPFPA letterhead, Caleb A. Gray-Burriss informed Areawide that the merger between NASPSO and SPFPA is a "reality"; that all union dues should be mailed to SPFPA; and that his (Burriss') title is now International Representative, SPFPA. By letter dated December 11, 2002 to Areawide on SPFPA letterhead, Burriss discussed a meeting held in September 2002 between Areawide and SPFPA and reiterated a request for information for, among other things, "record and check for all Pension contributions for all employees of AES in accordance with the Collective Bargaining Agreement", "Record of Health & Welfare contributions for all participating members in accordance with the CBA", and "Records of all retroactive payment made to all employees." In a charge (Case 5-CA-31061) filed on February 5, 2003, by SPFPA (and signed for SPFPA by Goodman) against Areawide, SPFPA alleged, among other things:

> Since on or about July 15, 2002, the above-named employer, by its officers, agents and representatives, has failed and refused to bargain in good faith with the International Union, Security, Police and Fire Professionals of America (SPFPA), the successor labor organization to the National Association of Special Police and Security Officers (NASPSO), a labor organization chosen by a majority of its employees as their exclusive collective bargaining representative with respect to wages, hours of work and other terms and conditions of employment at its Washington Metropolitan Area locations by failing and refusing to provide SPFPA, or its designee, with union dues/agency fee, health and welfare and pension reports, or corrected versions of such reports, and by failing and refusing to forward to SPFPA, or its designee, union dues/agency fees, health and welfare and pension monies deducted from employee paychecks.

In May 2003, when the Employer was awarded the contract with GSA for the buildings at issue in this proceeding, GSA provided to the Employer a copy of a collective-bargaining agreement between the predecessor contractor, Areawide, and NASPSO, which under the Service Contract Act constituted the applicable wage determination. By letter dated May 16, 2003, to Burriss, International Representative SPFPA, the Employer informed Burriss that Knight was taking over the contract between SPFPA and Areawide. Burriss responded by letter dated June 8, 2003, requesting information regarding the employees. By letter dated June 11, 2003 from the Employer to Burriss, the Employer stated that it would forward pertinent information. On or about July 6, 2003, on SPFPA letterhead, Burris requested the Employer to allow named employees to attend the SPFPA Leadership Conference on July 10, 2003. By letter dated July 8, 2003, the Employer denied this request. Then, by letter from Burriss dated October 10, 2003, on SPFPA letterhead, to the Employer regarding the security officers at the Cohen Building and Switzer Building, among others, Burriss stated:

> The National Association of Special Police and Security Officers (NASPSO) was elected the collective bargaining representative of the security personnel at these worksites. In August 2002, NASPSO merged with the International Union Security, Police, and Fire Professional of America (SPFPA), at that time, I became the International Representative for SPFPA. In this capacity, it is my practice to contact the company awarded a new contract at a worksite, where SPFPA represents the workforce, in an effort to initiate a positive labor/management relationship…. We are prepared to initiate negotiations between SPFPA and Knight Protective Services in January of 2004. Enclosed is a letter of recognition to be signed by Knight Protective Services and the International Union Security, Police and Fire Professionals of America.

By letter dated February 5, 2004, from Goodman as Vice President/General Counsel for NASPSO, the Employer was sent dues authorization forms for the Cohen/Switzer contract and was told to send the monthly dues to the attention of Goodman at P.O. Box 2081, Upper Marlboro, MD. By letter dated February 17, 2004, on SPFPA letterhead, from the International President of SPFPA to Knight, Knight was told that NASPSO merged with SPFPA on April 17, 2002, and the unit of Knight Protective Services falls under the merger. By letter dated February 19, 2004, from the International President of SPFPA to Knight, Knight was told that all dues payments for the Cohen/Switzer contract should be sent to SPFPA. The letter further stated "[u]nder no circumstances should this request be changed without my direct approval." By letter dated March 1, 2004, Goodman sent Knight a recognition agreement for Knight and NASPSO for the negotiation of a collective-bargaining agreement at the Cohen and Switzer Buildings. By letter dated April 16, 2004, Goodman, as Vice President/General Counsel of NASPSO, sent to Knight additional dues authorization forms for the Cohen/Switzer contract employees, directing dues be withheld for NASPSO. By letter dated May 20, 2004 from Goodman, on NASPSO letterhead, Goodman informed Knight that the merger between NASPSO and SPFPA was not finalized; that NASPSO is resuming control over its membership in the bargaining units in which NSPSO was certified; that union dues are to be forwarded to NASPSO; and that Burriss is now employed by NASPSO as its Executive Director.

At the hearing, Burriss testified that the merger between NASPSO and SPFPA was never finalized. He further testified that he did not have any authority to negotiate a collective-bargaining agreement between Knight and SPFPA, as he was not directed to do so by the International President of SPFPA.

CONCLUSION

A question of representation may be brought to the Board's attention by the filing of an employer petition, where one or more labor organizations affirmatively claim to represent a majority of employees in an appropriate unit. *Amperex Electric Corp.*, 109 NLRB 353, 354 (1954). Thus, a finding of a representation question is predicated on a union claim of representative status. *Bowman Transportation*, 142 NLRB 1093 (1963); *Westinghouse Electric Corp.*, 129 NLRB 846 (1961). Union conduct sufficient to constitute an affirmative claim for recognition may take many forms.

In this case the conduct constituting an affirmative claim took the form of two unions, NASPSO and SPFPA, both asserting that they are the incumbent union, requesting dues deductions be sent to them and demanding that the Employer recognize and negotiate a collective-bargaining agreement. From May 2003 until January 2004, the Employer only had dealings with SPFPA through its International Representative Burriss. Then, in February 2004, the Employer received conflicting letters from SPFPA and NASPSO, each stating that dues deductions are to be sent to their organization. After the Employer earlier received a bargaining demand from SPFPA in October 2003, in March 2004 NASPSO demanded recognition and bargaining. The final straw was in May 2004, when the Employer was informed that the SPFPA international representative who they have been dealing with since May 2003 is now the Executive Director of NASPSO and that NASPSO is "resuming control over its membership." NASPSO contended at the instant hearing that the merger was not finalized and that it is the certified collective-bargaining representative. Whether true or not, in these circumstances there are clearly conflicting claims for recognition from NASPSO and SPFPA. Accordingly, I will process the representation petitions herein.

UNIT SCOPE

The Employer has petitioned-for single facility units. SPFPA agrees with that position, but NASPSO contends that the Cohen and Switzer Buildings are an appropriate multi-facility bargaining unit. Under the predecessor collective-bargaining agreement with Areawide, the Cohen and Switzer Buildings were part of a multi-facility unit comprising at least 12 buildings; the Cohen and Switzer buildings, as well as 10 other named government buildings (Union Center Plaza, Drug Enforcement Agency, Federal Office Building 10B, Old Post Office Pavilion, Immigration and Naturalization Service, Federal Research Center, Metro I, Social Security Administration, Environmental Protection Agency, and National Building Museum.). The collective-bargaining agreement also purported to cover any other buildings for which Areawide received a contract with GSA. The Employer herein has five buildings under this particular VOA contract with GSA. The parties stipulated to the appropriateness of single facility units for the other three buildings: Union Center Plaza, DEA Science Lab, and USDA.

The Cohen and Switzer Buildings are located across the street from one another. The Employer provides the same services at each building, as well as the other three buildings under this GSA contract. Employees receive the same wages, which are determined by the Department of Labor wage determination, in this case based on the prior collective-bargaining agreement. The security officers for each building have distinct supervision. The parties stipulated that there is no interchange or transfer of security officers between the Cohen Building and the Switzer Building. Testimony by Donna Snowden indicated that security officers are infrequently transferred on a temporary basis between **any** of the buildings that the Employer has under contract with GSA. Labor relations policies are set by the Employer's corporate office for all buildings under GSA contract, and all of the Employer's hiring is done centrally at its corporate office.

Section 9(b) of the Act states the Board "shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof …." The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be "appropriate." *Overnite Transportation Co.,* 322 NLRB 723 (1996); *Parsons Investment Co.,* 152 NLRB 192, fn. 1 (1965); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enfd. 190 F.2d 576 (7th Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-23 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10th Cir. 1962).

The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *D&L Transportation*, 324 NLRB 160 (1997); *J&L Plate,* 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). The presumption in favor of a single location unit can be overcome "by a showing of functional integration so substantial as to negate the identity of the single facility." *Bowie Hall Trucking*, at 41. The factors the Board examines in making this determination are centralized control over daily operations and labor relations; extent of local autonomy; similarity of skills, functions, and working conditions; extent of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation Co.,* 330 NLRB 397 (1999); *Rental Uniform Service*, 330 NLRB 334 (1999). The burden is on the party opposing the petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*. Further, as the Board noted in *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980), the party seeking to overcome the presumptive appropriateness of a single-plant unit must show that the day-to-day interests of the employees at the location sought by the other party have merged with those of the employees at the other locations at issue.

I find that NASPSO has failed to present evidence sufficient to overcome the presumptive appropriateness of a single-facility unit. Although the Employer's operation is centralized with respect to establishing labor relations policies, including hiring, the Board has held that centralized administration is not the primary factor it will consider in determining whether employees at two or more facilities share a community of interest. *Neodata Product/Distribution*, 312 NLRB 987, 989 fn.6 (1993). The record reveals that supervision at the Cohen Building and Switzer Building, and at each building under the GSA contract, has significant local autonomy. In this regard, each building has its own project manager and shift supervisors. The building's supervisors issue verbal and written warnings, and initiate discharges, layoffs, and demotions.

NASPSO further failed to rebut the single-building unit presumption by a showing of significant employee interchange. The parties stipulated there was no interchange of security officers between the buildings. Testimony of Donna Snowden was that there was only infrequent interchange among **any** of the Employer's buildings under contract with GSA. The record is also void of evidence of any contact between Cohen Building employees and security officers at the Switzer Building. It is undisputed that the Cohen and Switzer Buildings are close in proximity. The other three buildings under this GSA contract are also located in the Washington, D.C. metropolitan area. The record is clear that there is no evidence of centralized labor relations that is unique to these two buildings vis-a`-vis the other buildings in the Washington D.C. metropolitan area.

In view of the local supervision at each building, the total lack of employee interchange, the absence of evidence of any employee interaction, and the absence of any recent bargaining history for a unit comprised only of the Cohen and Switzer Buildings, I find that NASPSO has not met its burden of showing that the petitioned-for single-building units are inappropriate. Therefore, based on the above and the record as a whole, I find that the Cohen and Switzer petitioned-for single-building units are appropriate units. See *Cargill, Inc.*, 336 NLRB 1114 (2001).

SUPERVISORY STATUS

At each building there is a project manager, who is a captain, and one supervisor on each shift, either a lieutenant or sergeant. There are four shifts at the Cohen Building and six shifts at the Switzer Building. At the Cohen Building there are 65 security officers, one project manager, and 7 shift supervisors. At the Switzer Building there are 27 security officers, one project manager, and an unknown number of shift supervisors. The record is unclear as to whether the shift supervisors at each building are sergeants or lieutenants. The shift supervisors report to the project manager, who reports to the director of operations at the Employer's corporate office. The duties of sergeants and lieutenants include the following: assign and direct security guards; inspect and review the work and appearance of security officers; issue verbal and written warnings[2] without consultation with superiors; effectively recommend more severe discipline; fill in at a post for relief or in an emergency; and record hours worked by the officers. Sergeants

[2] The Employer has a progressive disciplinary system.

and lieutenants are considered part of management, wear uniforms that include insignias of rank, and receive higher wages. They receive management or supervisory training, including training on administering disciplinary action.

Security officer Shavonya Gray, who works at the Cohen Building, testified that she has observed two sergeants sit posts at a scheduled time on a daily basis. Gray did not, however, observe the two sergeants for their entire shifts. Gray testified that she has been disciplined, either a verbal counseling or a write up, by a lieutenant for coming in late or not wearing her name tag.

The parties stipulated that the project managers/captains are supervisors within the meaning of the Act. The Employer and the SPFPA asserted that lieutenants and sergeants are also supervisors, but NASPSO declined to enter into that stipulation.

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

> The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. *Mississippi Power Co.*, 328 NLRB 965, 969 (1999), citing *Ohio Power v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status. *Chicago Metallic Corp.*, 273 NLRB 1677 (1985). As pointed-out in *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in *Hydro Conduit Corp.*: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992). In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. *Bowne of Houston*, 280 NLRB 1222, 1224 (1986).

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a

supervisor under the Act, not his or her job title. *New Fern Restorium Co.*, 175 NLRB 871 (1969).

I find that the record clearly establishes that sergeants and lieutenants possess and have exercised the authority to issue discipline to security officers. Accordingly, it is unnecessary for me to decide if sergeants and lieutenants possess and/or exercise any other supervisory indicia. I find that sergeants and lieutenants are supervisors within the meaning of the Act.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accord with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. As stipulated by the parties, the Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. Security, Police and Fire Professionals of America (SPFPA), is a labor organization as defined in Section 2(5) of the Act, and claims to represent certain employees of the Employer.

4. National Association of Special Police and Security Officers (NASPSO), is a labor organization as defined in Section 2(5) of the Act, and claims to represent certain employees of the Employer.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

6. The parties stipulated that the Employer, Knight Protective Services, Inc., a Maryland corporation, with an office and place of business in Capitol Heights, Maryland is involved in the business of providing security guard services to pursuant to contracts with the United States Government to various government buildings located within the Washington, D.C. Metropolitan area, including the Mary Switzer Building and the Wilbur J. Cohen Building. The Employer received in excess of $50,000 pursuant to a contract with the United States Government to provide security services. During the past twelve (12) months, a representative period, the Employer purchased and received goods valued at in excess of $5,000 directly from points located outside the District of Columbia, Maryland, and Virginia.

7. I find the following units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

CASE 5-RM-1000

All security officers employed by the Employer at the Mary Switzer Building in Washington, D.C., excluding all office clerical employees, professional employees, managerial employees, project managers, lieutenants, sergeants, and supervisors as defined by the Act.

CASE 5-RM-1004

All security officers employed by the Employer at the Wilbur J. Cohen Building in Washington, D.C., excluding all office clerical employees, professional employees, managerial employees, project managers, lieutenants, sergeants, and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the units found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **National Association of Special Police and Security Officers (NASPSO) or by International Union, Security Police and Fire Professionals of America (SPFPA), or by neither**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the units who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit Lists of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list

of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters for each unit. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). These lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). Upon receipt of the lists, I will make them available to all parties to the election.

To be timely filed, the lists must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **July 30, 2004**. No extension of time to file these lists will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted by facsimile transmission at (410) 962-2198. Since the lists will be made available to all parties to the election, please furnish a total of two copies, unless the lists are submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., E.D.T. on **August 6, 2004**. The request may not be filed by facsimile.

(SEAL)

/s/Wayne R. Gold

Wayne R. Gold, Regional Director
National Labor Relations Board
Region 5

Dated: July 23, 2004.